Mercer Law Review

Volume 32
Number 3 *Special Lead Articles Edition*

Article 11

5-1981

Carbon Fuel: An End to the "Best Efforts" Duty by International Unions to Get Wildcat Strikers Back to Work?

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Carbon Fuel: An End to the "Best Efforts" Duty by International Unions to Get Wildcat Strikers Back to Work?

The United States Supreme Court in *Carbon Fuel Co. v. United Mine Workers*[1] held that an international union or its regional subdivision cannot be held liable to an employer for damages resulting from a "wildcat strike"[2] because it failed to use its best efforts to bring about an end to the unauthorized work stoppage.[3] This holding reflects an effort by the Court to resolve the long standing conflict among the circuits on this issue.[4]

Plaintiff, a coal mine owner and operator, originally brought suit against three local unions of the United Mine Workers of America (UMWA), UMWA District 17 and the international union in federal district court pursuant to section 301 of the Labor Management Relations Act (LMRA).[5] Plaintiff sought damages and injunctive relief for forty-eight unauthorized work stoppages which had occurred at several of his mines over a five-year period. He alleged that the unauthorized work stoppages violated the mandatory arbitration provision contained in the collective bargaining agreement of the parties.[6] Plaintiff further asserted

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1. 444 U.S. 212 (1979).

2. A wildcat strike occurs when employees have selected a union as their exclusive bargaining representative and a minority of employees, without union authorization, engage in concerted activity as a form of economic pressure to induce concessions from their employer.

3. The Court in so holding affirmed the Fourth Circuit's holding in Carbon Fuel Co. v. United Mine Workers, 582 F.2d 1346 (4th Cir. 1978), *aff'd*, 444 U.S. 212 (1979):

> There is nothing in the contract making defendants liable for 'wild cat' strikes or requiring that they take any action with regard to them. . . . If [the representatives of UMWA] had done nothing when plaintiff called on them to help get the men back to work, there would have been no liability on the part of the defendants. This being true, defendants were not rendered liable by the efforts which these men made to bring about an adjustment of the difficulty, even if they did not do everything that they might have done to that end.

Id. at 1351 (quoting United Constr. Workers v. Haislip Baking Co., 223 F.2d 872 (4th Cir. 1955).

4. 444 U.S. at 215.

5. 29 U.S.C. § 185 (1976).

6. The collective bargaining agreement of the parties was the National Bituminous Coal Wage Agreement of 1971. It provided for mandatory arbitration of "all disputes and claims

that the international and district unions' failure to use all reasonable means available to prevent the strikes or bring about their termination rendered them liable to him for the ensuing damages.

The district court charged the jury that the defendants had the duty and responsibility to use all reasonable means to prevent or terminate the wildcat strikes, and that their failure to do so would render them liable in damages for the work stoppages.[7] Defendants objected to these instructions contending that they ignored the collective bargaining history of the parties. Verdicts were returned by the jury aggregating $206,547.80 against the international, $242,130.80 against the district and $722,347.43 against the three locals. All UMWA defendants appealed.

The United States Court of Appeals for the Fourth Circuit affirmed the district court's holding with respect to the local unions responsibility for the wildcat strikes based on the mass action theory.[8] However, it reversed the holding to the extent that the international and district unions were held liable for the strikes. The court, relying on its previous decision in *United Construction Workers v. Haislip Baking Co.*,[9] held that in light of the bargaining history, the district and international unions had no duty to use all reasonable means to prevent or terminate the wildcat strikes. The court further stated that, in the absence of any evidence that either organization "adopted, encouraged or prolonged continuance of the strike,"[10] neither union could be held liable for damages arising from the work stoppages. The case was remanded to the district court with directions to dismiss the case against the international and district unions. Plaintiff appealed and the Supreme Court granted certiorari to resolve the admitted conflict among the circuits.

Historically, Congress has taken a dim view of direct judicial intervention in labor disputes.[11] However, when the difficulty of judicial enforce-

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which are not settled by agreement." 444 U.S. at 221.

7. The court further instructed the jury that, if it found that the Locals had been acting as agents of the International and District unions, liability of the District and International organizations could be predicated on that basis also. 582 F.2d at 1350.

8. The mass action theory is based on "[t]he premise that large groups of men do not act collectively without leadership and that a functioning union must be held responsible for the mass action of its members." Eazor Express, Inc. v. International Bhd. of Teamsters, 520 F.2d 951 (3d Cir. 1975).

9. 223 F.2d 872 (4th Cir. 1955).

10. 582 F.2d at 1351.

11. The Clayton Act, Pub. L. No. 212, 38 Stat. 730 (1914) (codified at 15 U.S.C. §§ 12-27 (1976)), declared most peaceful concerted activities by labor unions to be nonenjoinable in federal court. Congress further stated that these activities were not violations of the federal antitrust laws. A clearer and more comprehensive ban against peaceful labor activities soon followed in the form of the Norris-LaGuardia Act, Pub. L. No. 65, 47 Stat. 70 (1932) (current version at 29 U.S.C. §§ 101-115 (1976)). The Wagner Act reinforced this "Federal anti-injunction policy" in 1935 by granting employees the right to engage in concerted activity

ment of arbitration and no strike promises threatened to become a serious problem,[12] Congress moved to restore some of the judiciary's power in the regulation of labor disputes. The enactment of the Taft-Hartley Act in 1947 played a major role in accomplishing this objective. Specifically, certain labor organization and employee activities were declared to be unfair labor practices.[13] Additionally, the right to bring damage actions in federal or state courts was espoused as one of the remedies for these practices.[14] This trend of strengthening the federal judiciary's role in labor disputes was continued by the Supreme Court ten years later in *Textile Workers Union v. Lincoln Mills*.[15] The Court in that case held that in contract enforcement actions "the substantive law to apply in suits under section 301(a) is federal common law, which the courts must fashion from the policy of our national labor laws."[16] Soon afterwards, the Court, in three cases known as the *Steelworkers Trilogy*,[17] announced a second major principle of substantive contract law in the labor field. It held that promises to arbitrate contract grievances should be broadly construed to encompass all disputes concerning the terms of the labor contract, unless the parties clearly negate that construction. The Court's enthusiasm for arbitration was based on three main factors: (1) the assumed expertness of the arbitrator,[18] (2) the fact that labor arbitration is a substitute, not for litigation, but for the use of disruptive economic weapons,[19] and (3) the fact that the *quid pro quo* for the arbitration promise of the employer is the union's unqualified promise not to strike about contract grievances of all kinds.[20]

Although the National Labor Relations Act (NLRA)[21] protects the right to strike except in narrowly defined circumstances, wildcat strikes have never enjoyed this protection.[22] The reason is inherent in the defini-

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for mutual aid and protection and by further shielding such activity from employer coercion and restraint. R. GORMAN, BASIC TEXT ON LABOR LAW 604 (1976).

12. The two major impediments to judicial enforcement of these clauses were: (1) the common law principle that arbitration promises were not specifically enforceable by injunction, and (2) the jurisdictional difficulties in suing a union because of its designation as an unincorporated association. *Id.* at 605.

13. 29 U.S.C. § 158(b) (1976).

14. 29 U.S.C. § 185(a), (b) (1976).

15. 353 U.S. 448 (1957).

16. *Id.* at 456.

17. United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

18. 363 U.S. at 581-82.

19. *Id.* at 578.

20. 363 U.S. at 567.

21. 29 U.S.C. §§ 151-69 (1976).

22. Food Fair Stores, Inc. v. NLRB, 491 F.2d 388 (3d Cir. 1974); Confectionary Union,

tion of a wildcat strike. This type of strike refers to the unauthorized work stoppages conducted and instigated by the employees without the support or ratification by the union. Historically, the employer's remedy for this particular type of work stoppage has been the power permanently to discharge the striking employees for the illegal action without suffering any impunity for doing so. In sanctioning this remedy, at least one court has held that the employer has not committed an unfair labor practice because the unauthorized strikers are not protected under section 7 of the NLRA.[23] This remedy may suffice in those instances when the strike lasted only for the short time and minimal damages were suffered. Many times, however, violence and large amounts of damages have ensued.[24] The problem then becomes one of who to hold accountable for these losses, or in a similar vein, what action or lack thereof by the union will render it liable for the illegal activities of its members. Justice Brennan phrased the issue in *Carbon Fuel* as

> "whether an international union, which neither instigates, supports, ratifies, or encourages "wildcat" strikes engaged in by local unions in violation of a collective-bargaining agreement, may be held liable in damages to an affected employer if the Union did not use all reasonable means available to it to prevent the strikes or bring about their termination."[25]

Prior to the Supreme Court's resolution of the issue in *Carbon Fuel*, two distinct viewpoints had developed throughout the various circuits. The primary cause of the split appears to be the various courts' construction of section 301(b). As the Court pointed out in *Carbon Fuel*, the two lines of view are represented by the decisions of *United Construction Workers v. Haislip Baking Co.*[26] and *Eazor Express, Inc. v. International Brotherhood of Teamsters.*[27]

The decision in *Haislip*, rendered by the Fourth Circuit and subsequently followed by that court and later the Supreme Court in *Carbon Fuel*, focused on a narrow construction of the common law test of agency. This interpretation of the agency term seems to require some type of overt adoption, encouragement or ratification of the strike before the international union can be held liable in damages for its consequences.[28]

Local 805 v. NLRB, 312 F.2d 108 (3d Cir. 1963); NLRB v. Draper Corp., 145 F.2d 199 (4th Cir. 1944).

23. NLRB v. Draper Corp., 145 F.2d 199 (4th Cir. 1944).

24. *See, e.g.*, Coronada Coal Co. v. UMWA, 268 U.S. 295 (1925), in which an enormous sum of damages was suffered by the coal company and two non-union workers were murdered.

25. 444 U.S. at 213.

26. 223 F.2d at 872.

27. 520 F.2d 951 (3d Cir. 1975).

28. 223 F.2d at 877.

The court in *Haislip* stressed section 301(e) in interpreting the term "agency."[29] That section provides that "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."[30] The purpose of this section was "to [restore] the law of agency as it [had] been developed at common law."[31] However, section 301 addresses the labor union's liability for the strike itself and the resulting damages, not liability for the union's failure to use its best efforts to get the striking workers to return to their jobs.

The court in *Eazor*, which represents the other line of authority, held a union liable for its failure to use all reasonable means to get striking members back to work. This court also recognized the difference between holding the union responsible for the initial work stoppage and making it responsible for the damages which ensue from its failure to use all reasonable means to get the strikers to return to work. The court said that, when union officials "instigated, participated in or actively encouraged" the wildcat strike, liability could be predicated on the common law theory of agency referred to in section 301(b) and (e).[32] The court, referring to the Restatement of Agency,[33] also called attention to the fact that under general agency law, a principal may ratify an agent's unauthorized actions by subsequently evincing conduct inconsistent with repudiation of the agent's behavior.[34] However, consistent with its earlier distinction between cases seeking to hold the union liable for the original actions of its agents and those cases holding the union liable for failure to exert its best efforts to end an unauthorized strike, the court espoused a broader test of agency for the latter situation. The court said that the failure of a union to exert its best efforts to end this type of strike could be interpreted as a passive acquiescence in the strike. The union could then be held liable based on either a theory of agency or mass action.[35]

This distinction was emphasized by the court in *Eazor* in the following

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29. *Id.* at 878.

30. 29 U.S.C. § 185(e) (1976).

31. 93 CONG. REC. 7001 (1947).

32. 520 F.2d at 963. *See also* Wagner Electric Corp. v. Local 1104, International Union of Electrical Workers, 496 F.2d 954, 956 (8th Cir. 1974); Vulcan Materials Co. v. United Steelworkers, 430 F.2d 446, 456 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971); Lewis v. Benedict Coal Corp., 259 F.2d 346, 351-52 (6th Cir. 1958), *modified on other grounds*, 361 U.S. 459 (1960).

33. The court referred to the RESTATEMENT (SECOND) OF AGENCY § 8 (1958) in making this point.

34. 520 F.2d at 964.

35. *Id. See also* Wagner Electric Corp. v. Local 1104, International Union of Electrical Workers, 496 F.2d at 956; Vulcan Materials Co. v. Steelworkers, 430 F.2d 446, 457 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971); United Textile Workers v. Newberry Mills, Inc., 238 F. Supp. 366, 372 (W.D.S.C. 1965).

statement: "It was the breach of this obligation [to use any and all reasonable means to get its striking members back to work] by the unions, not any responsibility for the particular unauthorized actions of their members, which generated liability on their part."[36]

In *Carbon Fuel*, Plaintiff's primary argument for holding the international and district unions liable for damages was what he termed their failure to use all reasonable means to prevent and end the unauthorized strikes at the coal mines. Plaintiff argued that this duty arose out of the collective bargaining agreement with the unions because the contract contained a mandatory arbitration provision and because of the inclusion of an agreement in the contract that the parties "agree and affirm that they will maintain the integrity of this contract. . . ."[37]

The Court unanimously refused to hold either the international or district union liable for the damages resulting from the local union's actions which were concededly in violation of the local's responsibilities under the contract.[38] The Court's holding was based primarily on the legislative history and content of section 301 and on the bargaining history between the parties.

In response to Plaintiff's argument that the inclusion of an arbitration provision in a collective bargaining agreement is the equivalent of an agreement not to strike, the Court said that the legislative history of section 301 clearly narrowed the instances in which a union might be found liable. In the future, a union's liability for the actions of its members will be confined to those situations which meet the "common-law rule of agency."[39] While section 301(b) provides that a union "shall be bound by the act of its agents,"[40] section 301(e) specifically limits the definition of agent to the common law interpretation of the word.[41] This test severely restricts the broader test of responsibility contained in the original 1935 Act.[42] During the Senate hearings on the new act, Senator Taft commented that in the future "legal proof of agency" would be required to hold a union liable for the actions of its members.[43] Therefore, in the absence of some ratification or support by the union of its members' actions, it cannot be held responsible for the damages resulting from such actions. In light of these clearly defined limits on an international or dis-

36. 520 F.2d at 962.
37. 444 U.S. at 216.
38. *Id.* at 221-22.
39. *Id.* at 216.
40. 29 U.S.C. § 185(b) (1976).
41. 29 U.S.C. § 185(e) (1976).
42. 49 Stat. 436 (1935). This section defined the term "employer" as including "any person acting in the interest of an employer. . ."
43. 93 CONG. REC. 4022 (1947).

trict union's responsibility for the actions of one of its local unions, the Court reasoned that it would be "anomalous to hold . . . an international . . . liable for its failure to take . . . steps in response to actions of the local."[44]

In the face of the legislative history and the clear language of the Act, the Court rejected Plaintiff's argument that an international union is liable under section 301 for any authorized strike by a local if the strike violates any term of the collective bargaining contract. In fact, it appears that it was totally irrelevant in this case whether the strike in the face of a mandatory arbitration provision was a violation of the contract because of the lack of any agency connection. Indeed, the court of appeals had found that the international union had repeatedly expressed its opposition to wildcat strikes.[45]

Similarly, the Court rejected Plaintiff's argument that the obligation to use all reasonable means to end an unauthorized strike may be implied from a contract provision obligating the union to "maintain the integrity of the contract." Plaintiff argued that this clause of the contract, which was included to encourage arbitration, would be rendered meaningless unless it was interpreted to require that a union exert its best efforts to force its members to comply with the contract terms. The Court said that allowing the parties' agreement to determine their relationship fostered one of the major policies Congress sought to promote through the NLRA—the policy of free collective bargaining.[46] The Court resorted to the legislative history of the contract in question to ascertain the meaning of the "integrity" clause and to respond to Plaintiff's contention.

In 1941, the Appalachian Joint Wage Agreement was first executed. It contained an express agreement not to strike. The National Bituminous Wage Agreement followed in 1947. This agreement rescinded all "no strike" clauses contained in earlier contracts. In its place it inserted an "able and willing" clause providing that the agreement would cover the employment of persons while they were able and willing to work in the coal mines. This clause was eliminated in 1950 and an "integrity and best efforts" provision was included. The Wage Agreement was amended again in 1952 to eliminate the "best efforts" clause. The integrity provision was inserted along with a provision for disputes to be settled exclusively by the machinery in the contract.

The Court concluded that interpreting the "integrity" clause of the contract to require the union to use its best efforts to resolve the wildcat strike would be tantamount to holding that the new language of the "in-

44. 444 U.S. 217-18.

45. 582 F.2d at 1351.

46. *See* Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962); Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957).

tegrity" clause subsumed the deleted "best efforts" clause. The Court dismissed this construction, stating that, if this had been the parties' intention, the deletion of the "best efforts" clause would have been senseless.[47] The Court reasoned that, since it had concluded that the integrity clause was not synonymous with the "best efforts" clause, it need not decide what the clause meant. However, the Court alluded to the interpretation given the clause in *International Union, UMWA v. NLRB.*[48] In that case, the court resolved that the "integrity" clause was more of a "gentleman's agreement" establishing that the most desirable way to settle disputes was through the implementation of the grievance machinery provided for in the contract.[49] Interestingly, Chief Justice Burger, who was serving on the District of Columbia's Circuit Court of Appeals at that time, dissented with that interpretation of the clause. He stated that he found it hard to believe that "these explicit detailed contractual provisions merely represented a loose 'gentleman's agreement' that the parties will try to resolve their problems without strikes or lockouts."[50]

Although the Supreme Court in *Carbon Fuel* declined to state what the clause meant, it explicitly held that it does not "impose on the union an obligation to take disciplinary or other actions to get unauthorized strikers back to work."[51] The Court reasoned that to hold otherwise would weaken the bargaining process and the national policy of encouraging free collective bargaining. In addition, the Court found it significant that, since the deletion of the "best efforts" clause but before the execution of the present contracts in question, two courts of appeals had declined to interpret the agreement as imposing liability on the union for its failure to discipline the unauthorized strikers.[52] The Court concluded that, if the decisions rendered by these courts were not in accord with the parties' understanding of their contract, they were free to rewrite it to express their intentions clearly.[53]

While its interpretation of the "integrity" clause of the contract admittedly played some role in the Court's decision, the Court's narrow common law construction of the definition of agency in section 301(b) was the deciding factor in refusing to impose a "best efforts" duty on the international or district union to get its striking members back to work.

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47. 444 U.S. at 221.

48. 257 F.2d 211 (D.C. Cir. 1958).

49. *Id.* at 218.

50. *Id.* at 219.

51. 444 U.S. at 221.

52. *See* Lewis v. Benedict Coal Corp., 259 F.2d 346 (6th Cir. 1958), *aff'd by an equally divided court*, 361 U.S. 459 (1960); United Constr. Workers v. Haislip Baking Co., 223 F.2d 872 (4th Cir. 1955).

53. 444 U.S. at 222.

The Supreme Court, in following *Haislip*, did not distinguish between holding the union liable for the strike itself and holding it liable for damages resulting from its failure to use all reasonable means to end the strike as the *Eazor* court had done. This vital distinction, which the Court chose not to address, is the key to imposing some degree of responsibility on international and district unions to encourage their locals and members to abide by the terms of the collective bargaining contract. In addition, it would prove a valuable method of shortening these wildcat strikes and minimizing the resulting damages. However, as the law now stands, unless the union encourages the illegal strikes through some overt action, its refusal to use its power to get its members back to work is not actionable. This interpretation appears to hold true regardless of whether the contract, bargained for between the international union and employers, contains an explicit no strike agreement or a mandatory arbitration clause. The message to employers is clear: if they intend to impose responsibility on unions to use their best efforts to end wildcat strikes, they must clearly express the duty in the contract.

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